

APPEAL NO. 010576

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 6, 2001. The hearing officer determined that the appellant (claimant) had not sustained a compensable injury; that the date of the alleged injury was _____ (all dates are 2000 unless otherwise noted); that the claimant had failed to timely give notice of his alleged injury to the employer (there was no finding on good cause); and that the claimant did not have disability.

The claimant, in his appeal, reiterates much of his testimony from the CCH and urges the Appeals Panel to reverse the decision. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant was employed as a driver on a trash collection truck and testified that he sustained a low back injury on _____ while helping a coworker lift a concrete trash can, which crumbled as it was lifted. The claimant testified that he reported his injury over his CB radio to KC, the dispatcher/supervisor, and JG, another supervisor.

In handwritten statements, both KC and JG denied that the claimant reported an injury at that time. The claimant continued working until August 26, when he went to a hospital emergency room (ER). The claimant apparently was in the ER past midnight because there are some references to a visit to the ER on August 26 and 27. The claimant reported his injury to the employer on August 28 and was referred to the employer's clinic, (clinic). Initial clinic records of August 30 do not give a date of injury but recite a history of "lower back pain X 1 month . . . picking up trash can." Other clinic records recite a _____ date of injury. The claimant subsequently began treating with a chiropractic clinic, which recorded a date of injury as _____ and diagnosed a lumbosacral sprain/strain.

The evidence was conflicting and the hearing officer commented that the claimant's "testimony was not plausible." The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W. 2d 286 (Tex. App. Houston [14th Dist.] 1984, no writ)). The hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Accordingly, the hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Robert W. Potts
Appeals Judge